IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

WEDNESDAY, THE 7TH FEBRUARY 2007 / 18TH MAGHA 1928

OP.No. 26089 of 2000(E)

PETITIONER:

FACT EMPLOYEES ASSOCIATION, UDYOGAMANDAL, REP. BY ITS SECRETARY, M.S.SIVASANKARAN.

BY ADV. SRI.RAJESH NAIR
SRI.BIJOY CHANDRAN

RESPONDENTS:

1. FACT LTD., UDYOGAMANDAL, REP. BY THE GENERAL MANAGER (PERSONNEL).

2. THE LABOUR COURT, ERNAKULAM.

3. THE SECRETARY, FACT WORKERS UNION, UDYOGAMANDAL.

4. THE SECRETARY, FACT EMPLOYEES CONGRESS, UDYOGAMANDAL

5. THE SECRETARY, FACT WORKERS ASSOCIATION, UDYOGAMANDAL

6. THE SECRETARY, FACT ENGINEERING WORKERS ASSOCIATION, UDYOGAMANDAL

7. THE SECRETARY, FACT(CD) EMPLOYEES ASSOCIATION, AMBALAMEDU.

8. THE SECRETARY, FACT(CD) EMPLOYEES ANGH, AMBALAMEDU.

9. THE SECRETARY, FACT (CD) WORKERS CONGRESS, I.N.T.U.C., AMBALEMEDU.

10. FACT (CD) EMPLOYEES UNION, AMBALAMEDU.

11. THE SECRETARY, FEDO EMPLOYEES ASSOCIATION, UDYOGAMANDAL

12. THE SECRETARY, FACT EMPLOYEES ORGANISATION, B.M.S, UDYOGAMANDAL

BY ADV. SRI.E.K.NANDAKUMAR.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 07/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

O.P.NO.26089/00

APPENDIX

PETITIONER'S EXHIBITS:

P1. COPY OF THE CLAIM STATEMENT BY THE PETITIONER DTD.25.5.93.

P2. COPY OF THE WRITTEN STATEMENT OF THE MANAGEMENT DTD.31.2.93.

P3. COPY OF THE AWARD DTD.30.6.99 OF R2.

Sdk+

///True copy///

P.A. to Judge.

S.SIRI JAGAN, J.

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O.P.No.26089 of 2000

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Dated this the 7th day of February, 2007

J U D G M E N T

One of the eleven unions in I.D.No.77/1992 before the the Labour Court, Ernakulam, has filed this original petition challenging Ext.P3 award passed by the Labour Court in that I.D. The issue referred for adjudication as extracted in the award was as follows:-

> "Whether the recovery of declared and paid annual bonus consequent to wage settlement dated is justifiable or not?"

2. The contention of the union is that for the years 1987-88 and 88-89 bonus had already been declared and paid to all the employees of the management. Later on, by a memorandum of settlement dated 14.7.1990, the management and the unions agreed to revise the salary of all the employees with retrospective effect from 1.1.1988 as a result of which, the wages of all the employees were recomputed with effect from 1.1.1988. Consequent on the same, salary of some of

the employees became higher than the upper limit prescribed by the Payment of Bonus Act and they became ineligible to get bonus. Therefore, the management initiated steps to recover the bonus paid to those employees who went out of the coverage of the Payment of Bonus Act as a result of the retrospective wage revision for the years 1987-88 and 1988-89. In respect of the same, various unions representing the workers of the management raised an industrial dispute to the effect that no such recovery can be made since the memorandum of settlement dated 14.7.1990, on the basis of which wage revision was effected, did not contemplate any such recovery of bonus already declared and paid. The Labour Court, to which the industrial dispute was referred for adjudication, did not find the claim of the unions sustainable. Therefore, by Ext.P3 award, the Labour Court found that the recovery of bonus, as a consequence of the retrospective wage revision is legal, valid and proper. This finding in Ext.P3 award is under challenge in this original petition.

3. The learned counsel for the union has made available to me a copy of the memorandum of settlement dated 14.7.1990. He would specifically draw my attention to the fact that nowhere in the agreement is there any clause which authorises the management to recover bonus already declared and paid. The contention is that in the absence of any such specific term in the settlement, the management cannot unilaterally take away the vested right of the workers to receive bonus, which had accrued two years prior to the settlement in question. He therefore submits that Ext.P3 award is perverse and is liable to be set aside holding that the management is not entitled to recover bonus already paid to some of the workers.

4. On the other hand, the learned counsel for the management would contend that the recovery is of bonus already paid to those workers who went out of the coverage of the Payment of Gratuity Act on account of retrospective pay revision. He specifically points out that every consequence of such retrospective pay revision was put into

practice in respect of all the workmen. The workmen who became entitled to higher bonus on the basis of the wage revision were paid additional bonus. Provident fund contributions were paid in respect of all the workers on the basis of the enhanced wage. Therefore, even in the absence of a specific clause in the settlement for recovery of the bonus from the workmen who went out of the coverage of the Payment of Bonus Act on account of the retrospective wage revision, such recovery is only a natural consequence of the terms of the settlement and therefore, the union cannot contend that no such recovery can be made. He further submits that when a memorandum of settlement is implemented, the unions cannot take a double stand of accepting the benefits and rejecting the adverse consequences. The implementation has to be uniform in respect of all matters which arise as a natural consequence of such retrospective pay revision which includes recovery of bonus paid to those workmen who went out of coverage of the Payment of Bonus Act, is the submission made by the learned counsel for the

management.

5. I have considered the rival contentions in detail.

6. It is true that the memorandum of settlement dated 14.7.1990 does not contain any specific clause with regard to recovery of bonus already paid in respect of those workers who went out of the coverage of the Payment of Bonus Act on account of retrospective wage revision, but there is also no clause therein to the effect that on such retrospective wage revision, those workers who became eligible to higher bonus would be entitled to such bonus. The management in their written statement specifically contended that additional bonus consequent on the pay revision was also paid wherever required. This fact is also not disputed before me by the counsel for the union. In fact that was accepted by the Tribunal as a matter of fact, which leads to the conclusion that that was not a matter in dispute before the Labour Court also. Therefore, the question to be decided is whether the workers can keep the consequence of

such retrospective pay revision which were beneficial to them and reject the adverse consequence thereof. I am of opinion that they cannot. On account of retrospective pay revision, the management would also be liable to pay additional contributions to the provident fund authorities on account of pay revision. If they do not pay, that would lead to coercive proceedings under the E.P.F. Act. Once retrospective pay revision is implemented, the workers are liable to take all the natural consequences arising from such retrospective pay revision both beneficial and adverse to them. They cannot choose only those consequences which are favourable to them and reject those which are adverse to them. The fact that there is no specific term of settlement in respect of both those matters, is of no consequence since these are only natural consequences of a respective wage revision which cannot be prevented in the absence of specific clause in the settlement.

7. In any event, the interpretation adopted

by the Labour Court is certainly a plausible one, which cannot be termed as perverse by any stretch of imagination. Even if another person may have a different view on the same set of facts, the same is no reason for this court to interfere with the findings of the Labour Court. This court can exercise its jurisdiction under Article 226 of the Constitution of India against an award in an industrial dispute only if the view taken by the Labour Court is demonstrably perverse which is the settled legal position. The discussion as above, would make it abundantly clear that such a finding is beyond the scope of this case. In such circumstances, I do not find any merit in the original petition and accordingly, the same is dismissed.

Interlocutory applications stand closed.

Sd/-

sdk+ S.SIRI JAGAN, JUDGE

S.SIRI JAGAN, J.

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O.P.No.26089 of 2000

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J U D G M E N T

7th February, 2007